s hould be two or three vacancies in the same Senatorial term. There may be twenty. I have served here, in my short period of five years, with Mr. Crittenden, with Mr. Metcalf, with Mr. Clay, with Mr. Meriwether, and I hope to serve with Mr. Dixon. Here, then, in the short period which I shall have been in the Senate I shall have served, if Mr. Dixon is admitted, with five distinct gentlemen as colleagues upon this floor. The incumbent dying may create a vacancy; the Legislature may fill it by an elec-tion, the man elected may die or resign, the Legislature or Governor may fill it, and that appointee may die or resign, and so in the course of six years there may be a dozen, there may be twenty individuals instead of five filling the vacancies which may occur from time to time. If it were a regular succession of vacancies one after the other in that way, nobody would open his mouth; it would be so perfectly plain and intelligible. What then produces the difficulty here? It is produced just upon the ground that a vacancy occurs, in the first place by a resignation, which is accepted, and filled by a legislative election, and then a vacancy for the reserved portion of the time is created by death, and that in the recess of the Legislature.

Without concluding, the honorable Senator gave way; and the Senate adjourned.

## Wednesday, December 15, 1852

The same subject being under consideration— Mr. UNDERWOOD said: Mr. President, when I gave way on Monday for the purpose of adjourning I had called the attention of the Senate to the different modes and frequency with which vacancies might take place in this body. I wish now to show the peculiarities of this particular case, and in a few words to show that the facts are somewhat novel, but that the principles which apply to the facts are precisely the same as those which apply to new.

or linary vacancies.

The novelty consists in this, that Mr. Clay, by a resignation in December, created a vacancy from and after the first Monday in September following, and then died before the time reserved to himself had expired. In that way he created a vacancy by his resignation to take effect at a future day, and then, by his death before the arrival of does the novelty of the fact, in creating first a vacancy by resignation and then a second vacancy by death, alter principles of the constitution? Let gentlemen who may respond to me turn their attention if they please to that particular point, and show if they can how the principle applicable to vacancies in general is changed—how the constitution can be changed—by the novelty of the fact whereby a first vacancy was created by resignation and a second by death for the reserved portion of the time. Sir,

it cannot be done.

It seems to me that those who oppose the view which l the United States as an indivisible unit—a unit that can-not be cut up into parts; or, to present what I apprehend to be their view, they regard it as a single tenement, which, when leased, and a tenant put in possession, can-not be broken into fractions or divisions for the time for which the lease is made; and then they say that the tenaut being in possession of the house, it is altogether ridi-culous to put another tenant in while he is there—there can be no vacancy in that house while there is an actual tenant possessing it. In this way, according to the arguments which I have read, Mr. Clay being in the house to carry on the illustration—at the time the Legislature elected Mr. Dixon last December, that election was null and void, because there can be no such thing as putting two persons in the same tenement. The error of that ar gument—the error of such an illustration as that, consists in this: Those who rely on such a physical illustration seem to suppose there can be no division of a Senatorial term; they suppose that there is but one room in this tenement, whereas-to illustrate further by the same figurethere are six apartments in the tenement; at least there are six sessions of Congress, according to the Constitution, embraced by one Senatorial term, each session com-mencing on the first Monday in December. In this point of view, like the six tenements in the house, it is perfectly competent for a tenant to say to the landlord, up five apartments, or three, or one, and I will only ocresidue;" and if he does that, well may landlord fill the apartments thus surrendered and made vacant by the surrender. So it is precisely in reference to the Senatorial term of six years. A Senator may say I will resign one, two, three, four, or five sessions When he does that, the constitutional sessions which he gives up become vacant, and the constituted authorities may fill them. But the reason of the case and the precedents go further than that. The precedents go so far as to say that he may surrender a part of one session. He may surrender any part of the whole term, and then there arises a vacancy which may be filled.

Sir, these illustrations, growing out of a reference to

physical facts, although good, are not conclusive in an argument of this sort, because an office is not a thing which you can test by the senses. You cannot see it, or feel it, or hear it, or apply any of the senses to it. It is an abstract idea. It exists in the mind. It is a creation of law. It as clearly exists in the abstract view in which I am contemplating it, as if it were a physical existence that you could see and feel; and, viewing it abstractly, you can see as clearly that it is divisible as you can see that a house is divisible into apartments, and that you can render a part of the time vacant by such divisibility as that you can render a portion of the house vacant by surrendering some of the apartments and retaining one

I will now call the attention of the Senate to two more cases, which seem to me to place this matter beyond the possibility of a doubt. One of them is a Kentucky casethe case of Mr. Clay and Mr. Crittenden-and being a Kentucky case, and having been sanctioned by the Senate, well may the Legislature of Kentucky say, In the election of Mr. Dixon we have precedent to justify our action.

And, sir, if you reject Mr. Dixon, and exclude him from his seat, what will the Legislature and people of Kentucky say when they contrast your present conduct with the past decision of the Senate, which admitted Mr. Critten-den under precisely the same circumstances as those which exist in behalf of Mr. Dixon? They will say that the Senate of the United States have tolerated things precisely analogous to those which exist in Mr. Dixon's case, and, without raising one word of objection, set a precedent for his election; that when the Legislature o Kentucky acted in conformity to that precedent, and elected Mr. Dixon, on the presentation of his credentials, a question was raised in the Senate contesting his right to a seat, and he was rejected, and that such exclusion of their Senator violated the established law of this body, and deprived one of the States of the Union of half her representation in the Senate. Sir, people may begin to inquire whether laws are binding without full represen-My constituents will never submit to a deprivation of their constitutional rights; and one of the dearest of those rights, to a free people, is to choose for them-

selves their own law-makers Here are the facts, precisely analogous in the case of I have taken them from Messrs. Clay and Crittenden. the records of the Senate. Mr. Clay's full term commenced on the 4th of March, 1887, and consequently continued until the 3d of March, 1843-six years. He resigned and retired from office, his resignation to take effect on the 1st day of April, 1842. After that resigna tion-to wit, on the 25th of February, 1842, more than a month preceding the time fixed by him for his resignation to take effect—the Legislature elected Mr. Crittenden to fill the vacancy. Mr. Clay, on the 31st of March, the day before the resignation was to take effect, presented th credentials of his successor to fill his own vacancy; and on the 1st of April Mr. Crittenden stepped into the seat. There are the facts. There was a prospective resignation by Mr. Clay. There was an election by the Legislature of Kentucky of Mr. Crittenden more than a month before the time arrived when Mr. Clay was to go out of office.

There was the appearance of Mr. Crittenden in the Senate on the day on which the resignation was to take effect and the presentation of his credentials; the taking of the oath of office, and his taking the seat. The case runs "all fours" precisely with the case of Mr. Dixon. Who can discriminate? I heard it said the other day that the reason why that was law and this was not law, is. that Mr. Clay sanctioned his own resignation by present ing the credentials of Mr. Crittenden, and therefore confirmed the resignation, which otherwise would have been ineffectual. Unless it is good for some reason of that sort, and bad without it, it is a case precisely parallel in every particular with the present case. Bo isely alike in respect to a resignation to take effect at a future day, in respect to an election by the Legislature before that day arrived, and the presentation of the person elected, with his credentials in conformity to his election, after the prospective resignation, or rather present resignation, to be complete at a future day, had fully taken

The onth of office was administered to Mr. Crittenden and he allowed to take his seat without a word of objection. In that particular I already see the analogy has whether the objection will prevail. Sir, what a spectacle shall we set to the State of Kentucky if it should prewail? Ten or fifteen years ago Mr. Clay resigned exactly in the manner he lately resigned. Mr. Crittenden was elected to fill his place. Mr. Crittenden took his seat without any objection. Mr. Dixon comes under the same circumstances, and the Senate rejects him. In the case while the Legislature was in session, to take effect at a day more distant than the end of the session of the Legislature. The Legislature adjourned before the 1st of April arrived, just as the Legislature adjourned before April arrived, just as the Legislature adjourned before April arrived, just as the Legislature adjourned before the time arrived from which the late resignation of Mr. It was never upon the records of the Senate. And United States from the State of Kentucky, this my resignation that appears there appears in precisely the same manner than to take effect on the first Monday of September, 1852.

In dissolving this official relation in which I stand to the the time arrived from which the late resignation of Mr. Clay was to take effect. Mr. Clay's letters of resignation what appears there appears in precisely the same manner were addressed to and delivered during the sessions of in Mr. Meriwether's case. Now, sir, take it up. Here it

that? None at all. It is not entirely new that there | the Legislature. Hence there is an utter impossibility of discriminating in principle between the two cases; and you must make new rules, new laws, to govern the Senate, or you must admit Mr. Dixon, to preserve your

An excellent suggestion has been made to me. If it An excellent suggestion has been made to me. If it be attempted to discriminate between the cases, and say Mr. Clay confirmed his resignation by presenting the credentials of Mr. Crittenden, it does not alter the case, because it still leaves the legislative election to have taken place before there was a vacancy. Mr. Clay confirming his resignation on the 31st of March, when he presented the credentials of his successor, could not retract in such a way as to give power to the Legislature two months before that time, when they had no power, according to the argument which is made use of here, to make the election. So that you perceive there is an utter impossibility, as I have stated, of getting clear of the authority, unless you intend to make entirely new rules; and then the hardship of it is, that you are to make a new rule that is to operate on the very State in whose case you have settled the law rightly; and all we ask now is, that you shall adhere to it and enforce it. The State has acted according to the rule which you have heretofore set it in every particular; and, having acted according to that it has a right to say that you should abide by itthat you should administer to it the same law as hereto-fore, and not bring up a new law, and give it an ex post facto operation for the purpose of excluding one of its Senators.

Sir, I show you by numerous cases, to which I have already called your attention, that it is not a new thing for members of the Senate to send their resignation to the Legislature of their State whilst in session, and fix prospectively a day when they will retire from office, so as to enable the Legislature to elect under such a resig-

Now, if it is well settled that this is all right, constitutional, and proper, how can Mr. Clay's subsequent death, before the time which he reserved to himself expired, al-ter or divest the right of the Legislature to elect a successor, which right the Legislature derived from his letter of resignation, delivered to them the Desember before he died? That the Legislature had the right to elect, foundthat time, created a vacancy in the reserved time. The only novelty results from the fact that no case of that kind had previously occurred in the history of the Senate. But how Senate. This right of the Legislature to elect qually results from the Constitution when connected with the letter of resignation, because by the Constitution, as I showed the other day, no difference is made between a prospective other day, no difference is made between a prospective resignation and an actual resignation in presenti. Let gentlemen if they can, if they are disposed to answer this argument, let them get up and show if Mr. Dixon's election and the procedings of the Legislature were legal in December, how they become illegal and void because Mr. Clay died in June following? Does a constitutional principle depend upon the death or the life of a man? Who ever heard of a position of that sort, that a thing is constitutional principle depend upon the death or the life of a man? am taking of this subject regard a seat in the Senate of thing is constitutional if a man happens to live, and very unconstitutional if he happens to die? It is preposterous, and the mere statement is enough to show it. But I desire to give another case. I refer to the case of the Senator from Georgia, (Mr. CHARLTON.) Here are the facts, which I have taken from the record. Mr. Berrien's full term commenced on the 4th of March, 1847. He resigned, and retired from the Senate on the 28th of ay, 1852, some two or three days before the time fixed for his resignation to take effect. After his resignation, and before he retired from the Senate, to wit, on the 18th of May, 1852-your records show that he actually remained up to the 28th—ten days before the day he retired, and some thirteen or fourteen days before his resignation took effect, the Governor of Georgia commissioned Mr. Charlton to supply the vacancy. Mr. Charlton appeared on the 11th of June, 1852, and was qualified without any sort of objection; and, what makes the case still more in point, Mr. Charlton's commission actually limits the time, as in the case of the commission of Mr. Meriwether, up to which he is to serve. So that it is a case precisely in point; and if it was altogether illegal for the Governor of Kentucky to limit the time that Mr. Meriwether was to continue in office, the Governor of Georgia was equally guilty of a blunder by inserting in Mr. Charlton's commission the time for which he was to serve.

Mr. CHARLTON. Will my friend from Kentucky yield

e the floor ? Mr. UNDERWOOD. Certainly. Mr. CHARLTON. I have sat still and listened to the

various annotations which have been made upon my case without replying; but it seems to me that it is time for me to say a little on the subject myself. The various opponents in this case are so well matched that they dis-like to come very near to each other's weapons, and they are fleshing them in my body, which is interposed between them; and although that may be sport to them, it is death to me.

Now, Mr. President, I recollect reading of an instance when the celebrated Baron Cuvier went into a hall of philosophers in France. There were forty of them, and they told him that they had been passing the morning in di-gesting and making a perfect description of an animal which is called the crab. They told him they would like which is called the crab. They told him they would like him to look at it, but they thought the analogies were all perfect, and that it could not be improved. They handed to him the description in these words : " Crab ; a red fish, walks backwards. He said: analogies are all very fine, indeed;" (he was a very polite man;) "but I could make a few trifling suggestions to you, which probably would add a little to the force of this bijou of a description; and these are, first, the crab is not red; second, that the crab is not a fish; and third, the crab does not walk backwards." That is precisely the condition of the analogy between the Georgia and the Kentucky case. They do not begin the same; because, in one case, there is an alleged usurpation of the Executive prerogative which does not exist in the other; they do t progress the same, because the Kentucky case has not been confirmed, as my appointment has been, since the racancy; and, lastly, I do not think that they will, in all

probability, end the same.

Mr. President, it is not pleasant for any man, however stinguished the office may be, to have a seat on this floor o hold it by sufferance : therefore it is that I interfere in this stage of the debate. I suppose that my friend from Kentucky, and the other honorable Senators who have argued this case, on his side of the question, will readily conede that he who can make the appointment can also confirm it; and that though it may be true that though at the time of the appointment he had not the right to make it, nasmuch as the time was in futuro, yet, after the period has arrived when the resignation was to take full effect, he can confirm it, and his confirmation will be good from that time. Take the instance of an infant. He can make no negotiable note that will bind him : but after he comes f age, if he confirm it, it becomes his note from that time, without reference to the date of the instrument. And so

it is with this confirmation. Though it may be true that the appointment was void at the time, (upon which subject I pass no opinion, for I do not intend to vote; I will not subject myself to the imputation of either being inconsistent or indelicate,) yet after the 1st of June had arrived, there can be no doubt that the Governor of Georgia had a right to appoint to fill the vacancy. I did not present myself here, as the Senator from Kentucky has said, until the 11th of June, and during that interval not only was the commission ne gatively confirmed by no subsequent one having been made, and since, by my taking my seat without the Governor interfering, but it has also in various ways been incidentally affirmatively confirmed; and if it be necessary for me to take that position, I can claim simply from the confirmation made to that appointment since the 1st of June. Can anybody doubt that the Governor of Georgia had the right, after the first of June, to confirm that ap-pointment, though it be dated on the 17th of May? Can the date of the deed alter its tenor at all? Is it not the elivery of the instrument, and not the date of it, to which we are to look? I beg the Senator's pardon for interrupting him at this stage of the debate, but I trust that he will see that there is a manifest difference between the two cases; and I am prepared to show that, if he will have the kindness to insert a reference in that resolution of my case, that I am de jure et de facto the Senator from Georgia, colding my appointment by authority (if he will have it

subsequently to the first day of June.

I thank the Senator from Kentucky for having permitted me to interrupt him, which I would not have done had I not felt it to be my duty to show that, apart from any question involved in this case, my right to a seat here night to be undoubted.

Mr. UNDERWOOD. Instead of intending to inflict any wound upon my friend from Georgia, it was my intention to sustain his right and title to his seat on every principle of constitutional law. I intended to show that the Governor of Georgia was right, as I intend also to show that the Governor of Kentucky was right. But, sir, with regard to the analogy, our faculties of comparison sometimes do not exactly agree. I think there is a perfect likeness between the cases of Mr. Meriwether and of my friend from Georgia. That I intend to show. That his case and Mr. Dixon's may terminate differently is what I fear. I hope they will not. But if they do terminate dif-Objection is made. It yet remains for us to see | ferently, the country perhaps may trace the event to causes and reasons which I shall not assign for that difference. eties of my station. I would inform my friend from Geor gia that we have to test the analogy of the cases by what appears on the files and the records of the Senate. cannot go into any thing extrinsic to ascertain whether cannot go into any thing extrinsic to ascertain whether healtation, proceeding partly from my feeble state of health there are differences; we must take the language just as of Mr. Crittenden, the resignation of Mr. Clay was made it stands upon the record. If there has been any subsequent confirmation of his right to a seat here, it has never been presented to the Senate. I do not think any such subsequent confirmation was necessary. If it was necessary, it has never been done. I think his right is perfect

is. I will repeat it again very briefly, so that the members of the Senate may see the precise analogy. Mr. Berrien resigned prospectively. That created the vacancy, in the opinion of the Governor of Georgia, and upon the presentation of the resignation he appoints and commissions Mr. Charlton before the day arrives fixed by Mr. Berrien for his retirement. That is an authority to support the right of Mr. Dixon, claiming under the prospective resignation of Mr. Clay. Mr. Meriwether, I admit, claimed his right in consequence of the actual vacancy occasioned by the death of Mr. Clay. There is that difference, and that is all. The prospective resignation, and letter of resignation in the case of Mr. Berrien, took place during the recess of the Legislature. Mr. Clay's letter of during the recess of the Legislature. Mr. Clay's letter of resignation was written and delivered while the Legislature was in session, but the time fixed when he was to retire from this chamber happened in the recess of the Legislature. The cases are precisely the same in the principle for which I cite them. One is the case of an Executive appointment, based upon a recessaria. tive appointment, based upon a prospective resignation, and made before the arrival of the day fixed in the letter of resignation, when the member would cease to act. The other is the case of a Legislative election, based upon a prospective resignation, and made before the arrival of the day for the incumbent to retire. No one questions the propriety of the Executive appointment. That is Mr. Charlton's case. Many seem to doubt the propriety of these Legislative elections. That is Mr. Dixon's case. Mr. Meriwether was appointed by the Governor to hold his seat for a limited time; Mr. Charlton was appointed by the Governor to hold for a limited time. wether presents his credentials, and is qualified without objection being made; Mr. Charlton presents his credentials, and is also qualified without objection. Both are appointed by the Governor for limited periods; both are qualified without objection, both the commissions stating the period when the term of service is to expire. And now, after receiving one commission of that sort, and allowing a gentleman to be qualified without objection, how can you get up and say that the other commission, pre-cisely the same in its character, and which limits the period of service in the same manner, is void? I deny it. It is in conformity to the fact.

The Governor of Kentucky had, before that time, com-

sissioned Mr. Dixon, and he could not allow his files to show the inconsistency of one commission to Mr. Dixon, from and after the first Monday in September, and then another to Mr. Meriwether, which could be construed to be in conflict with the other. The Governor was perfect ly right in making out the second commission, and he put upon the face of it what his duty required him to do, n order to prevent any conflict between the two. The Governor acted wisely, by inserting in the second commis-sion the period up to which Mr. Meriwether was to hold his office. What right have you to go behind the Gov-ernor's commission? What right have you to revise the mode and manner in which the States make out their credentials to those who are to represent them, when, by the constitution of the country, the times, mode, and manner, and every thing, belongs to the State Legislature and the State authorities, until you shall undertake by law, according to the constitution, to alter the modes of proceeding by the State authorities. Is there any question of contest here between A and B? Is there any question of contest here made by any one, with regard to the legality ing by the State authorities. Is there any question of contest here between A and B? Is there any question of contest here made by any one, with regard to the legality of the commissions? None whatever. The State law and the State authority have a right to control all this, and you are to give efficiency to it, until somebody raises a as they did fill it by the election of Mr. Dixon. question; and that question, according to the constitution, that position can be overturned, and unless it must be with reference to age, residence, citizenship, or shown that such a division of the six years could some other personal qualification, or else it must be with reference to the legality of the election or appointment. My State has done all this in pursuance of her law, and in pursuance of your precedents; and I say that it is a most ungracious task on the part of the Senate of the United States to be undertaking to revise the proceedings of my Legislature, or the acts of the Governor of the State, upon no better foundation than objections to the form or language of a commission defunct upon its face, and which no one is yet attempting to revive.

But I deny that the commission of Mr. Meriwether is void because a limitation is inserted in it, or that the limitation is void. Sir, if that limitation be void, the whole commission is void, and that upon settled princi-

Lord Coke says that "if a man do less than the com mand or the authority committed to him, then what he does is void." Go and look at Dunlap's Paley upon Agency, page 179. According to the doctrine advanced by some gentlemen the Governor of Kentucky, in Mr. Meriwether's case, did not fulfil his duty. He did, they say, a great deal less than he was required to do, according to the constitution. He was required, gentlemen say to make out a commission which should have such validit; and effect as to confer upon Mr. Meriwether the whole term left by Mr. Clay's death and his resignation. It is manifest that he did not do that. He only commissioned him for a few months, up to the first Monday in Septem-ber. Then, exactly in the language of the authority to which I have referred, he did less than he was commandwhich I have referred, he did less than he was commanded to do; he did only part of his duty, and, having done part of his duty, the act was void. What are gentlemen doing, then? They are acknowledging by their own arguments that the paper presented shows that the Governor did a great deal less than he ought to have done. He did not meet the requirements of the constitution, and yet they say we'll enlarge that have a constitution to the say we'll enlarge that have a constitution and the say we'll enlarge that have a constitution and the say we'll enlarge that have a constitution. face of it, and make it meet the requirements of the constitution to the whole extent, although it is but the partial and limited execution of a power. Thus they

mean to give validity to a defective commission, accord-ing to their own admissions, to suit their own purposes and designs, directly contravening the doctrine of Coke. Now, as a legal proposition, can this be done? As a sensible proposition, can it be done? No, sir. The Governor of Kentucky had a right, under the state of facts appearing on the records and proceedings of the Legislature, to insert the fact that the appointment was up to the first Monday in September, when the legislative election should take effect. That was all he had a right to do, and he did that fully, and expressed it upon the face of the paper. If you do not sanction it as it stands, you are bound to regard the whole as a nullity; for then, under the doctrines of agency, it is all a nullity; nor then, then those who contend that the seat was filled by Mr. Meriwether are making a claim in Mr. Meriwether's behalf upon a void paper, and not upon a legislative election—a void act of the Governor, according to their own position. How, then, can they claim that he should hold the seat under that void act? The thing is impossible, the seat under that void act? The thing is impossible unless you intend to make a law for the States, and have persons put in office contrary to the will of the majority of the Legislatures of these States. Is that the principle upon which an American Senate can act? Is it not at war with every thing like the genius of our Govern-ment? Who can say that the Governor of Kentucky would have commissioned Mr. Meriwether at all, if he had known that the Senate would enlarge and extend th time of his appointment beyond the date limited by the Governor? Are you to stultify the Governor, and be cause you think he ought to have done more than he did do to meet the requirements of the Constitution, are you at liberty to enlarge his commission, and make it confer an office for years which he limits to two months' duration? No, sir; you have no right to reverse the rule, and make the minor include the major. But if you are fully convinced that the Governor erred, and did less than he should have done, after you have instructed him in his duty, you should be instructed by Coke, and de-chare the commission to Mr. Meriwesher altogether void, and let the Governor have another chance to select a new man, as well as make a new commission. For the Senate to stretch an Executive commission is as objectionable, in my judgment, as the Procrustean process of lop-

ping off.
Mr. President, I have now vindicated, as I conceive the Legislature of my State for acting as they have done; I have vindicated the Governor of my State. He is not a gentleman of my political creed, but he is one for whom I have high respect and esteem, who, I believe, has acted honestly, conscientiously, and properly in making out the commission to his appointee in the manner in which he has done it, and I am sorry that his political friends in this body should be those raising the voice of censure

against his conduct.

Allow me now to read the resignation of Mr. Clay, and to show that it is absolute and unqualified, reserving only a small portion of time to himself. As I shall have little te say after I have read it, and as it was his last act in communicating to the Legislature of his State, I hope the Senate will pardon me, as it is not very long, for

reading the whole of it: WASHINGTON, DECEMBER 17, 1851.

WASHINGTON, DECEMBER 17, 1851.

To the General Assembly of Kentucky:

When you did me the honor to confer on me the appointment of a Senstor from Kentucky, which I now hold, in accepting it I did not intend or expect to serve the entire terr of six years. I had previously retired, finally, as I supposed from that body. But out of the territorial acquisitions re-sulting from the war with Mexico momentous questions arone, seriously menacing the harmony and peace, if not the integrity of the Union. I felt it to be my duty to return again to the Senate, and to contribute my humble aid, by an icable settlement of those questions, to avert the calar with which we were threatened. Such a settlement was at-tempted during the last Congress, is now in progress of exe-cution, and I trust and hope will accomplish all the good that could be expected from any great measure adopted to heal national divisions and animosities which had risen to such an alarming height.
On the approach of the present Congress, it was with muci

But I have no thought of ever again taking a seat in that body after the close of the present session. Having come to this determination, I consider it incumbent on me to place it in the power of the General Assembly to appoint my succesor during its present session.

I do therefore hereby resign the office of a Senator of the

General Assembly, I cannot forbear renewing the expression of my great obligations and my profound gratitude for the many distinguished and gratifying profes which it has given many distinguished and gratifying profes which it has given me of its confidence and attachment.

I have the honor to be, with the highest respect, your faithful and obedient servant, H. CLAY.

The Legislature was then in session. He states that his object in resigning is to allow that body to fill the vacancy for the residue of that session of Congress. He says in substance: I never expect to take my seat in another Congress. I do therefore hereby resign my office in the Senate of the Wonter of the instrument, the right to fulfil the duties of Senator during the residue of that session of Congress when he was here in Washington. After that resignation to take effect on the first Monday in Senator shall be elected for six when he was here in Washington. After that resignation to take effect on the first Monday in Senator shall be closed for six when he was here in Washington. After that resignation of the United States, to take effect on the first Monday in Senator shall be made complished, the Judges when he was here in Washington. After that resignation of the Constitution of the Supreme Court should resign, their resignation to take effect at the end of the exercise of the constitution, in the exercise of the constitution, in the exercise of the constitution, in the case of the constitution, in the case of the constitution, in the case of the constitution of the last seasion of Congress. He was meriputed the other of the profession of the Legislature, early the project of six years; and the term of the Legislature, and therefore six Senators when he was here in Washington. After that resignation of the United States, to take effect at interpretation of the constitution on that provision for the Le

Now, a word to my friend from Georgia. I have no a sovereign State. That is the effect of making these commissions void. But I utterly deny that they are void. They are in conformity with the fact; they express the truth; they tell what actually exists, and they are made out in the execution of authority which the Governor had a right to exercise in each instance. They show what the idea of future resignation.

other member on this floor.

I wish gentlemen, when they answer this argument, to show how it is that you cannot divide, prospectively, by resignation, a Senatorial term. Let it be a starting point to get up and show how it is that that is a legal and constitutional impossibility. If they can show that it cannot be done, I shall be startled, and be ready to surrender, I apprehend, the argument which I have made. But as long as I believe that you can, by resignation, exercise the constitutional right of dividing the term into different that position can be overturned, and unless it can be shown that such a division of the six years could not be made by resignation, I think my argument is unanswerable; but I believe I shall have astuteness enough to see how that position can be overturned, should it be done; and if it can be proved that it is a constitutional impossibility to divide a Senatorial term by prospective resignation, I surrender all that I have said.

Mr. TOUCEY. It was my wish that this subject should have been referred to a committee, that the precedents might be examined, the subject deliberately considered, and presented to this body in a mature form. I thought if that course was taken, the precedent which would now be set would hereafter be regarded as entitled to higher consideration. But as the subject has been gone into, as the debate has been continued from day to day, and conducted with no little ability, I have become satisfied that this whole question must be disposed of substantially

Mr. President, there is, in my judgment, a preliminary question affecting this whole subject, which entirely disposes of it. It is one that has not been presented to the Senate in any of the precedents which have been cited, and I have received no information from any quarter that that question has heretofore been brought under consideration. It is whether a Senator can resign his Senatorial office after his death.
I confess, sir, that I have not been able to bring my

mind to entertain any serious doubt that the resignation of Mr. Clay, transmitted to the Executive of Kentucky a year ago, with a proviso attached to it that it should take effect on the first Monday in September last, which was after his death, is necessarily inoperative and void by the occurrence of that event. It is impossible not to believe that it was made upon the inherent and indispensable condition that his life should be continued to the specified period, when the act, by the terms of it, was to be effective to vacate the office. I doubt not that the incumbent on that idea. I doubt not that when he transmitted that resignation, before the arduous labors of that session, he presented it under the belief, if I may so say, the fundamental belief, that his life would continue to that period, requiring that act in order to vacate the office. Not only was it the presumed intention of the in-cumbent, but it was perfectly understood by the Execu-tive, and by the Legislature of Kentucky, that that resignation was transmitted upon that condition. And now, as that condition has never been fulfilled, that resignation never took any effect. It would be impossible to suppose that either the incumbent or the Legislature of Kentucky should have imagined that it was possible for a Senator to undertake to resign the office which he held after the period when he ceased to be here, capable of acting. I regard it, therefore, as entirely inoperative, because that mplied condition, which is indispensable, did not occur. What power has an officer over the office which he holds after his death? In fact there is an entire defect of power in any incumbent, either directly or indirectly, to resign an office, or to vacate an office, or to execute any instru ent by which it shall be resigned or vacated, at a period ment by which it shall be resigned or vacated, at a period subsequent to his death, because, in the first place, he has no power at such subsequent period. He has no power at the time when it had been vainly provided that the act of resignation should take effect, but it had passed from him, without any agency of his, in an irresistible way, for which the Constitution had made ample provision. And there is no subject for the power to operate upon.
That, also, had passed out of his hands by the same event; and when the resignation was to take effect, both the power and the office had passed away from him. There was, therefore, neither power nor subject. The office had passed out of his hands, and perhaps had been filled in a constitutional manner long previous to the time when the resignation was intended to take effect, and when, by the very terms of it, it was to take effect, if it ever should

It has been said in regard to property that the owner may by an instrument act upon that property after his death; but there is no analogy between the two cases of property and office; there is no property in an office. The power of the owner to act upon property is by the manner of disposing of it. But has an officer any power of dispo-sing of an office after his death? Can he do an act which is to take effect after his death, that shall have any influence or any control over that office? It might be more properly compared to a life-estate, or to an estate for years, deble with life. Can the tenant in that case dispose of the term after his death and when his power over the property has gone? Can he execute any instrument whatever that shall have an influence upon it? I confess, Mr. President, that have not been able to discover any ground upon which it can be said that a resignation, to take effect after the death of the incumbent, can have any effect upon that office whatever. The resignation is void because the condition s not fulfilled: it is void because there is no power over t; and it is void because there is no office in the hands of the incumbent for that power to operate upon.

It seems to me, therefore, after the best attention that

have been able to give to this subject, that the resignation of Mr. Clay was founded in a mistake, upon the idea that he would be living on the first Monday of September, and would have an office to resign, and he therefore incorporated into his resignation that it should take effect on the first Monday of September, long after the time when he ceased to live. As it was to take effect at that time, and not before, it appears to me that it was entirely void, entirely inoperative, and presents a case that has never been before this body, and for which there is no precedent that has come to my notice, or which has een suggested by any Senator on the other side. Hence I think that there was no resignation—that his contemplated resignation never took effect—that no vacancy ever occur-

red by reason of that resignation.

But, sir, with reference to prospective resignations; I have no difficulty in regard to them, if they are resigna-tions to take effect while the incumbent is still in office, and while the appointing power remains unchanged. If the Governor of a State, during the recess of the Legislature, makes an appointment before the vacancy actually occurs, and he continues to have the power to make that appointment, and does not revoke it, and the incumbent does not, there is no question, and it is the ordinary case of a person doing an act which he has the power to do; and when the power continues, and his concurrence and assent og tinue, it becomes an unquestioned and unquestionable act, and no title in opposition to it can be brought into existence. But how is it with regard to prospective appointments? Suppose a Senator is elected for the pe-riod of six years, and after he has been elected he resigns, the resignation to take effect at the end of five years, and then the vacancy is filled by the Legislature in session.

degree of permanency unknown in any other department, the principles of the Administration about to go out by the verdict of popular opinion? And yet if it be true that if an officer resigns with a reservation to take effect five years hence, as a Senator might do, it is a present vacancy Now, a word to my friend from Georgia. I have no idea of turning him out. I do not want any confirmation of his commission; but I will say to him, if Mr. Dixon is to go by the board in consequence of the commission to Mr. Meriwether, I think he, too, ought to go. I have always acted upon the principle of equal justice to all men, and I do not like to see fish made of one and flesh of another. Let all fare alike; and I think, therefore, that if the one commission is not to entitle Mr. Dixon to his seat, so the other should not entitle my friend from Georgia to his seat. In that case, my friend from Georgia would be, for all practical purposes here in Congress, as if we had taken up any stranger in the streets, brought him in, qualified him, and given him a seat to represent as sovereign State. That is the effect of making these commissions void. But I utterly deny that they are void. They are in conformity with the fact; they express the

out in the execution of authority which the Governor had a right to exercise in each instance. They show what the Governor intended to do. It has been done correctly in my opinion in both instances, and my friend from Georgia is as much entitled to his seat on this floor as I am, or as any other member is; and so was Mr. Meriwether while he was here. He was as much entitled to hold under his commission until the first Monday in September as any sion of the Legislature continued to the time when that vacancy actually happened, it would fall within the category which I have already stated. If not, I can only say that it was so near the adjournment of the Legislature that the subject was not presented to the Senate. No discussion was had in regard to it. No consideration was given to any question then arising, and it passed sub silentio, and ought not to have the weight of a precedent,

or to exercise any control over the pending question.

But how is it possible that a resignation to take effect at a future day should have a present operation and also a future operation? Gentlemen on the other side of the question seem to think that a resignation to take effect at a future day produces a present metaphysical vacancy, and that, at the future day at which it takes effect, it produces another and an actual vacancy. Now, can there be to one act a double operation of that kind? Can there be two such results from the same resignation?
And when the resignation is to take effect at a future day, can it take effect before that day to any intent or purpose whatsoever? It is impossible; in the first place, because the resignation is contingent, according to the view which I have already presented, upon the continu-ing life of the incumbent. It is an inchoate act—a coning life of the incumbent. It is an inchoate act—a contingent act; it is a resignation which cannot operate to vacate the office, unless the incumbent lives to the day Constitution, and the Constitution, according to the when it does operate to vacate the office. In the next when it does operate to vacate the omce. In the next place, it is impossible, provided the will of the incumbent is the rule, because it is his will that its operation shall be postponed. It is a resignation to take effect at a cer-tain future day, and not before. How can a new and distinct operation, in fact, be given to it before the in-strument is to take effect?

strument is to take effect?

It seems to me that, in reason, and under the principles of constitutional law applicable to this subject, it is impossible that the one single act of resignation can have any such twofold effect. It amounts to nothing but a no-tice—that is, provided the incumbent cannot recall it, tice—that is, provided the incumbent cannot recall it, which is a question that has never been passed upon by the Senate. No such question has ever been presented. The case of Mr. Bledsoe, of Kentucky, has been referred to as concluding that point; but what was that case? It was simply this: Mr. Bledsoe, prior to the 24th of December, 1814—probably a short time preceding that day—had transmitted to the proper authority a resignation, to take effect on the 24th of December. After that day had passed and after public and private information had compassed, and after public and private information had com-municated the fact that the Legislature, which was in session, had filled the vacancy, Mr. Bledsoe, in the month of January, by a written communication, presented the subject to the Senate, to decide whether he was still in office. The Senate decided that he was not in office, and it is very difficult to see how they could have arrived at any other conclusion. The time when the resignation was to take effect hed passed, the party had not attempted to recall it; the Legislature had acted by filling the vacancy; and the only question, as far as I can discover, was ether the seat was to be vacated by him before he had official notice that his resignation had been accepted or the vacancy had been filled. On that point I am not abl to see how there can be any diversity of opinion; and that case is analogous to many other cases which have been

Again, sir, can an incumbent, if he does not resign and vacate his seat, change the tribunal by which the appoint-ment is to be made? Suppose Mr. Clay had lived to the first Monday of September; if there had been no previous notice given, the Governor must have filled that vacancy. Now, can an incumbent, by electing to give notice to the Legislature at its previous session, change the appointing ower, and take away from the Governor the power conerred upon him by the Constitution? The clause in the Constitution is, "If vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary ap-pointments until the next meeting of the Legislature." It is very obvious that if this resignation was to take ef-fect on the first Monday of September, if the office was hen to be vacated, it would at that time be filled by the Executive of the State, unless the incumbent by giving previous notice could change the appointing power. He as not bound to give any such notice. He could have resigned during the recess of the Legislature. He was not willing to resign the office until the first Monday in september, and at that time, upon resigning the office, the vacancy occurred.

Could he change the appointing power? The Constitution says that when a vacancy happens during the re-cess of the Legislature the Governor may appoint "until the next meeting of the Legislature." Can that constitu-tional provision be altered, changed, or modified by the incumbent, by his giving previous notice that he resigns to take effect at a particular day in futuro? Can the Legislature of the State, by any law, take that power from the Governor? Can Congress, by any law, modify or change that constitutional power of the Executive of the State, provided the vacancy happens during the recess of the Legislature? Sir, there is no power in this country short of an amendment of the Constitution that can take away from the Executive that constitutional power. notice by the incumbent—no action by the State, unless by the assembling of the Legislature—no action of this Government can take away that constitutional power from the State Executive. He "may" exercise the power; that s, its exercise is discretionary with him. There may be casens of State why he should not exercise it; and if he do not exercise it he is acting within the discretion which the Constitution has conferred upon him; but if he does exercise that power, provided the vacancy then occurs, the appointment is a constitutional appointment, and one

which must be governed by the Constitution.

The honorable Senator from Kentucky asks, with an air of triumph, "What is a vacancy?" A vacancy is a cessation of incumbency. The officer is out of office when the office is vacant. He ceases to be in office when it is vacant. Can an officer be partly in office and partly out of office? Can a Senator who is in office as a Senator of the United States be in office for certain purposes and not for all? Has he not all the rights and priv nator under the Constitution, and can any one of these rights or privileges be taken away, so that they may not be exercised by him down to the moment when he resigns the station and goes out of it, and an actual vacancy takes place? I apprehend there can be no question with regard to that,

I think, then, Mr. President, that when the Legislatur of Kentucky made the appointment of Mr. Dixon they had no power to make it, because there was not only no constitutional vacancy, but the contemplated vacancy never arose. On the contrary, the death of Mr. Clay before the time contemplated for the expiration of his service vacated the office from the moment of his death to the end of his term. The language of the Constitution itself im-plies that. The clause which has been referred to implies it, and recognises the vacancy produced by death as a vacancy extending through the whole term from the moment of death, because it proceeds to provide that it may be filled by the Executive of the State until the next meeting of the Legislature, and after that by the Legislature itself.

But, sir, the question in this case stands upon a somewhat different ground from that. It is admitted on all sides that there was a vacancy here occasioned by the death of Mr. Clay; that he died in office; and that he was a Senator from Kentucky up to the period of his death. When he died a vacancy arose by his death, and Mr. Meriwether was appointed by the Governor under this

ment, said that he did not hold until the next session of the Legislature, because a Senator had been elected for the term commencing on the 4th of March next. But that election could make no difference. The same result would follow if there had been no such election. The temporary appointee holds until the next session of the Legislature within the term in which existed the vacancy that he fills. It is necessarily understood that it is during that he fills. It is necessarily understood that it is during the continuance of the official term.

the continuance of the official term.

Now, sir, it seems to me, when the credentials of Mr. Meriwether are presented to this body, that every Senator in looking at them, under the light of the Constitution, sees that they constitute an appointment until the next session of the Legislature, if there be such a session during the term, a vacancy in which he was appointed to fill. That is the language of the Constitution, and that language cannot be altered either by the Governor or by the Legislature. The act of the Governor of Kentucky was an act in the performance of his official hor or by the Legislature. The act of the Governor of Kentucky was an act in the performance of his official duty, and the insertion of any restriction or modification of the official term would be as nugatory as if the President of the United States, in nominating a Judge of the Supreme Court, should introduce into it a restriction; the restriction would be void, and the appointment being confirmed by the Senate, the Judge thus appointed would hold the office according to the Constitution of the United States. So it is, in my judgment, in this case of the States. So it is, in my judgment, in this case of the appointment of Mr. Meriwether, and the credentials show it. The vacancy by death having occurred during the recess of the Legislature, was filled by the Governor of Kentucky, and being filled, he has no power to qualify it. He has no power except to make the appointment; and when he makes it it extends to the end of the term or to

I apprehend, therefore, that Mr. Meriwether is entitled prima facie to the seat. The credentials of Mr. Dixon, which are presented, are not prima facie credentials enti-tling him to the seat, because there are prior credentials which show, in the view I have taken, that the office is

filled. These are the views at which I have arrived, after the These are the views at which I have arrived, after the consideration which I have been able to give to the subject on the questions arising out of it. My opinion has been formed deliberately, and I have therefore undertaken deliberately to express it, as the subject has been gone into at some length by various Senators. Certainly there can be no disposition in the Senate to deprive either incumbent, on the one side or the other, of the seat that he is entitled to. Whatever may be the wishes of either party, or whatever may be the feelings of the Legislature or of the neonle of Kentucky, we sitting here view I have taken of it, does not entitle Mr. Dixon to occupy a seat in this body.

Mr. HALE next obtained the floor, who gave way

for the Senate to go into Executive session

## PRACTICAL AMALGAMATION.

FROM THE LOCKPORT (NEW YORK) COURIER OF APRIL 19 Our readers will probably remember the excitement which was caused in Onondaga county by the report that Prof. Allen, a negro teacher, was about to marry the daughter of a clergyman in whose family he was intimate. The community was so outraged by the statement that they rose en masse determined that the contemplated step should not be taken. The father of the misguided girl who was about to unite herself for life to a negro, though he had previously countenanced his visits, and argued that there should be no social barriers between the two races, was almost heart-broken in anticipation of the proposed alliance. The feeling was so strong that the marriage was given over at that time, and Prof. Allen proposed alliance. The feeling was so strong that the marriage was given over at that time, and Prof. Allen declared his intention of not again seeking the hand of the lady, and the lady in turn averred that she would not marry her colored lover on any considerations, as she had recovered from her delusion. But this was only a ruse to deceive the public and the friends of the lady. By the following, which we copy from the Syracuse Star, it will he seen that the "unboly compact" has been entered and the couple have followed Mrs. Stowe to England :

" MARRIED, in New York city, March 30th, by Rev. THOMAS HENSON, Professor WILLIAM G. ALLEN, of Magrawville, N. Y., and Miss MARY E. KING, of Fulton, N. Y., daughter of Rev. Lypon King, of Fulton.'

We expected as much. We were liberally abused for our discountenance of this marriage, and charged with wilfully falsifying facts, because we insisted that this af-fair was in contemplation and would yet go off. *Prof.* Allen denied it, and others thought that they had the most positive assurance from his statements that the amalga-mation wedding was a fiction. But now after he and his white brethren have liberally impugned our motives, charged falsehood upon us, and made solemn asseverations designed to make the public believe that no such thing was in contemplation, in two brief months the thing is consummated with all the formality of a religious observance, and this unholy amalgamation is perpetrated before high heaven and asserted

among men.

Prof. Allen and his fair bride are now in Europe. It is well they should emigrate, to show admiring foreigners the beauties of American Abolitionism. Let them attend the re-ceptions of the Dutchess of Sutherland, the soirces of English ceptions of the Dutchess of Sutherland, the soirces of English agitators, and the orgies of Exeter Hall. Let Geo. Thompson introduce them as the first fruits of his philanthropic labors in America. Let them travel among the starving English operatives, who would gladly accept slavery if assured of a peck of corn cach week; let them wander among European serfs whose life, labor, and virtue are the sport of despots, compared to whom the cruelest slave driven is an angel, and there proclaim their "holy alliance." If the victims of English and Continental tyranny did not turn their backs, disgusted with the foul connexion, their degradation must be infinitely greater than we had supposed.

DEATH FROM ROPE JUMPING .- A girl about fourteer rears of age, who was at Sunday School at New York last Sunday, in good health, undertook the next day to jump the rope two hundred times without stopping. She did so, but the unnatural exertion threw her into an illness which proved mortal. She was buried on Tuesday.

The remains of the GREAT NAPOLEON are to be made the occasion of another pompous ceremonial in Paris on the 8th of May. They are to be removed on the 4th from the Chapel of St. Jerome to the monument erected for them under the dome of the Church of the Invalides, and on the 8th the tomb will be "inaugurated" with great

There are nearly five hundred prisoners in the two Poni-tentiaries of Pennsylvania. In the Western Institution the labor of the convicts has covered the cost of their subsistence during the year, and has paid four-fifths of the salaries of the officers.

The citizens of Cleveland, Ohio, have, by a majority of more than six hundred, authorized the construction of water-works, at a cost, it is said, of \$4,000,000.

Woman's RIGHTS .- A woman, who belongs to that class of matrons who believe in keeping up the supervision of her family affairs, in attending to the economical arrangements thereof, in looking after her children and scolding her serthereof, in looking after her children and scolding her servants, as her mother and grandmother did before her, suggests to us that if the Constitution is changed so as to permit women to vote, the day of voting must also be changed, as Monday is washing-day throughout the Commonwealth, by universal acceptation, and women of her sober and humdrum qualities, being unable to attend the polls on that day, will be entirely outvoted by the romantic and ambitious highlyers, whose regard for woman's rights is so much greater than their approval of woman's duties. It is therefore suggested that, to preserve the rights of the minority, when the Constitution is altered so as to allow women to vote. Monday shall be abolished as a

as to allow women to vote, Monday shall be abolished as voting day in Massachusetts,-Boston Courier. A lady of the Old Bay State, who is sojourning in the Jersies for a little season, hopes that no voting will be allowed by the new constitution on Tuesdays, because Tuesday is ironing-day throughout that State.

RESULT OF A STRIKE.—The Philadelphia Ledger gives the following as the result of a recent strike in that city "Among those who resist the recent strike for higher wages "Among those who resist the recent strike for higher wages are the hotel-keepers, who say that their profits are now too seriously affected by the great increase in the cost of sil kinds of provisions to admit of their raising the wages of their employes. The waiters at the Franklin House, a few days ago, struck for an advance of wages, and gave the proprietors notice that they would quit at the end of the week if their demand was not acceded to. The keeper of the hotel immediately engaged a number of young women, and introduced them into the dining rooms to wait upon the table. The male waiters instantly left the house, but the female waiters performed their duties so well, and so much to the satisfaction of the boarders and employers, that the latter have concluded to retain them as attendants, dispensing entirely bereafter with male servants."